

An overview of how the employment relationship can come to an end (Part 1)

An employment relationship is based on an agreement between the employer and the employee. When the agreement ends, we say that the contract of employment terminates.

Contracts of employment can terminate in terms of the common law or through 'dismissal' in terms of the Labour Relations Act 66 of 1995 (LRA).

An employment relationship terminates naturally in terms of the common law, in the following ways:

1. By mutual agreement

The start of the employment relationship is based on agreement and therefore the parties can also agree to terminate the contract. Termination of an employment contract by mutual agreement does not constitute a dismissal, but there must be genuine agreement to terminate.

2. Upon completion of the specific task or expiry of a fixed-term period

At the time an employer and employee enter into a contract of employment, they can agree that the employment relationship will be for a fixed period or upon completion of a specific task. For example, if an employee agrees to a two-year contract, when the two years are complete, the contract comes to an end. In terms of the LRA, where an employee earns below the threshold of payment as stipulated in the Basic Conditions of Employment Act 75 of 1997 (BCEA), and the employer employs less than 10 employees (or less than 50 employees if the business has been in operation for less than two years under certain conditions) such agreement must be in writing.

This type of termination does not amount to dismissal, unless:

- The employee expected the employer to renew the contract on the same or similar terms but the employer offered to renew it on less favourable terms, or did not renew it; or
- The employee expected the employer to retain the employee in employment on an indefinite basis, but on the same or similar terms and conditions of employment, but the employer offered to retain the employee on less favourable terms or did not offer to retain the employee.

See information sheet: What happens when a fixed-term contract ends

3. By the death of either party

If an employee dies the employment contract comes to an end. If an employer is a natural person, and he/she dies then the employment contract comes to an end (for example, in the situation of an employer who employs a housekeeper in his/her personal home). However, if the employer is a juristic person, like a company, the death of one of its members, directors or office bearers will not terminate the contract of employment.

4. By supervening impossibility of performance

When there is some factor outside the employment relationship that prevents a party from performing its duties for an unreasonable period, the other party is entitled to terminate the contract on the grounds of supervening impossibility of performance.

This may happen in the case of a war, natural disaster, or as a result of state action. For example, if an employee is sentenced to a prolonged period of imprisonment, the employer could terminate his or her contract.

5. By Insolvency / liquidation

If an employer is sequestered or liquidated, an employee's contract would be automatically terminated on the date of the sequestration or liquidation. The employee would have a right to claim common law damages for losses caused by the termination, but these must be claimed from the insolvent estate (individuals) or liquidated estate (juristic persons).

See CCMA information sheet: Insolvency and liquidation

6. Upon retirement

Where an employee has reached the normal or agreed retirement age applicable in the employer's business, a contract of employment terminates by agreement and is not a dismissal. However, where an employee is dismissed on an arbitrary ground based on his or her age, it could amount to an automatically unfair dismissal in terms of section 187 of the LRA. This could happen if one employee is required to retire at a certain age, yet this is not generally applicable to other employees.

See information sheet: What happens when an employee retires

7. By resignation

Resignation is when the employee decides to end the employment relationship. An employee is required to give an employer notice that s/he intends to resign. A voluntary resignation is where the employee intends to terminate the employment relationship of his/her free will. Where an employee is forced to resign because the employer made continued employment intolerable, this could amount to a dismissal in terms of section 186 of the LRA. This is known as a constructive dismissal.

See information sheet: What happens when an employee resigns

See information sheet: When is a resignation a constructive dismissal

